UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,344	07/18/2003	Bruce M. Ruana	RUANA-002CIA	4786

28661 7590 04/14/2006

SIERRA PATENT GROUP, LTD.
1657 Hwy 395, Suite 202
Minden, NV 89423

EXAMINER	
HOGE, GARY CHAPMAN	

ART UNIT	PAPER NUMBER
3611	

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/622,344	RUANA, BRUCE M.	
	Examiner	Art Unit	
	Gary C. Hoge	3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-12 and 14-30* is/are pending in the application.

4a) Of the above claim(s) *9,21,24 and 25* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-8,10-12,14-20,22,23 and 26-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 9, 21, 24 and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on February 28, 2005.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 3-8, 10-12, 14, 16-20, 22, 23, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens (5,733,228) in view of Mencarelli et al. (5,348,360) and *Safety-Grip*.

Stevens discloses a railing **15** having an outer surface and a circumference, and a body **32** having a first side and a second side opposite the first side. However, it is not known how the body is secured to the railing. Mencarelli teaches that it was known in the art to attach a padded hand-grip that wraps around an elongated object and is secured thereto by an adhesive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wrap the hand-grip around the railing disclosed by Stevens and to attach it thereto with an adhesive, as taught by Mencarelli, in order to be able to remove and replace the hand-grip when it becomes worn. Further, the body disclosed by Stevens does not include printed indicia forming a visual image. *Safety-Grip* teaches that it was known in the art to provide a fabric cover

over a foam-type hand-grip, the fabric cover including a company logo and telephone number, which is a form of advertising. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hand-grip disclosed by Stevens with a fabric cover featuring a printed logo, as taught by *Safety-Grip*, in order to advertise the manufacturer of the hand-grip.

Regarding claims 3, 10, 14 and 22, the hand-grip disclosed by Mencarelli is a "foam-like resilient material" (col. 3, lines 43-44). This foam pad, because it is resilient, is "stretchable" (claims 10 and 22).

Regarding claims 4-7 and 16-19, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation does not distinguish over the prior art.

Regarding claims 8 and 20, it is not known what type of ink is contemplated for the fabrication of the device disclosed by *Safety-Grip*. However, because it is within the level of ordinary skill of a worker in the art to select from among known materials on the basis of their suitability for the fabrication of a given device, and since a person having ordinary skill in the art would know that conventional ink would be suitable for the fabrication of an indicia of the type shown by *Safety-Grip*, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the indicia disclosed by *Safety-Grip* from conventional ink as a matter of choice in design, based on such factors as cost and availability of the materials to the designer.

Regarding claim 15, it is not known what material Mencarelli contemplated for manufacturing the hand-grip. However, because it is within the level of ordinary skill of a

worker in the art to select from among known materials on the basis of their suitability for the fabrication of a given device, and since a person having ordinary skill in the art would know that polyester would be suitable for the fabrication of a device of the type shown by Mencarelli, it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the device disclosed by Mencarelli from polyester as a matter of choice in design, based on such factors as cost and availability of the materials to the designer.

4. Claims 26, 27 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mencarelli et al. (5,348,360) in view of *Safety-Grip*.

Mencarelli discloses a pole **22** having an outer surface and a circumference, and a body **26** having a first side and a second side opposite the first side. The body is attached by an adhesive. However, the body disclosed by Mencarelli does not include printed indicia forming a visual image. *Safety-Grip* teaches that it was known in the art to provide a fabric cover over a foam-type hand-grip, the fabric cover including a company logo and telephone number, which is a form of advertising. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hand-grip disclosed by Mencarelli with a fabric cover featuring a printed logo, as taught by *Safety-Grip*, in order to advertise the manufacturer of the hand-grip.

Response to Arguments

5. Applicant's arguments filed April 7, 2006 have been fully considered but they are not persuasive.

Applicant alleges that the *Safety-Grip* reference does not include advertising. Granted that it is difficult to read the writing on the scanned printout from the *safety-grip.com* website, a

trip to that website (http://www.safety-grip.com/Features.html) shows that the writing consists of the words "safety-grip" in an arc across the top, a phone number printed linearly across the middle, and the words "www.safety-grip.com" in an arc across the bottom. This clearly constitutes advertising, because it attracts public attention to the product and informs the public where to obtain the product. Applicant's argument that advertising must be paid for in order to qualify as advertising is specious. The concept of "free advertising" is well known, as is the practice of a company advertising itself by placing its logo on its products. Further, *Webster's II New Riverside University Dictionary*, 1984 edition, defines "advertising" as "The act of calling public attention to a product or business." In this definition there is no requirement that the advertiser pay for the advertising. Still further, even if we were constrained by Applicant's definition, the logo printed on the *Safety-Grip* device does constitute paid advertising, in that the ink and the manufacturing step required to print the logo costs the company money.

The rest of Applicant's arguments are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary C Hoge
Primary Examiner
Art Unit 3611

gch